

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10831 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

LOK PRAKASHAN LTD

Versus

STATE OF GUJARAT

Appearance:

MR KM PATEL for Petitioners
MS MANISHA LAVKUMAR for Respondent No. 1, 3, 4
MR SH SANJANWALA for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/06/2000

ORAL JUDGEMENT

1. Shri K.M. Patel, learned counsel for the petitioners states that Shri K.G. Vakharia, Senior Advocate is the counsel who is to make submissions in this matter and he has gone abroad and the matter may be

adjourned.

2. I do not find any substance in this request of the counsel for the petitioners. If Senior Advocate is not available and the petitioner considers that the matter has to be argued by the Senior Advocate, accordingly arrangement should have been made but merely because Senior Advocate has gone abroad and will return in the month of July, it may be hardly a ground for adjournment. In case on such grounds, the matters are adjourned, it will be very difficult for the Courts to decide the matters. There is yet another ground for which I consider it to be not appropriate case where request made for adjournment of the matter has to be granted. From the affidavit of Shri P.K. Laheri, Additional Chief Secretary, Information and Broadcasting Department, Government of Gujarat dated 11-2-1999, copy of which has been served upon the petitioners on 5th April, 1999, I am of the opinion that now nothing substantial survives in this petition. The court then put to the counsel for the petitioner that if he so desire, may make submissions in the matter but he has only reiterated his request for adjournment and has not made any submissions in the matter. Shri K.M. Patel is not a new comer to the profession. He has sufficient standing at the Bar and though he may not be a designated Senior Advocate, he is a Senior Advocate i.e. an Advocate having vast experience at the Bar and he could have prepared this matter for making submissions as it is an old matter.

3. Earlier also this matter had come up for consideration before the Court many a times, and at one point of time Shri Vakharia, Senior Advocate was present and he stated that the Government has started to give advertisements to the petitioner-newspaper. However, he stated that he is pressing this petition against the respondent No.2 for awarding compensation to the petitioners for the loss which it suffered because of the arbitrary and malafide approach of his against the petitioner.

4. In the petition, the petitioners prayed for manifold reliefs including the relief for issuance of a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to pay just, exemplary and punitive compensation to the petitioners for impugned action which is vindictive, malafide, malicious and in gross abuse and misuse of the powers by the respondent No.2. Another prayer made is also to be referred which is made in

clause (C) of para-23 of the petition. In this para, it is prayed that a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may be granted directing the respondents to pay just compensation to the petitioners for the loss suffered and also for the injustice done to them on account of gross abuse of powers by the respondent No.2.

5. If we go by these prayers made then I find that the petitioners nowhere prayed for any relief only against the respondent No.2. The compensation for gross abuse or misuse of power by the respondent No.2 has been claimed from the respondents which includes other respondents also. If we go by the substance of the prayers then the petitioners are praying for direction to the State government to pay compensation for the alleged vindictive, malafide, malicious and in gross abuse and misuse of powers by the respondent No.2.

6. After filing of this petition, the petitioners prayed for amendment thereof and thereby further prayer (AA) of para-23 has also been added, which reads as under:

(AA) to declare the policy of the State Government (Annexure A) to the affidavit-in-reply dated 11th January, 1997 filed on behalf of the first and fourth respondents (Pages 59, 60, 61 and 62) as unconstitutional, illegal and unjust.

The petitioner prayed for declaring the policy of the State Government as incorporated in the circular dated 11th January, 1997 as unconstitutional, illegal and unjust.

7. The facts of the case, in brief, are that "Gujarat Samachar" which is a daily newspaper, is being published since last 65 years, and as per the case of the petitioners, it has got excellent reputation for publishing the news and views and it has wide circulation as well as vast readership. It is the grievance of the petitioners that the news and views published by "Gujarat Samachar" are not liked by the respondent No.2, the then Chief Minister of the State and his Government. The respondent No.2 in his interview to daily "Indian Express" on 11-12-1996 told that he has given orders to his Government not to release any Government advertisements and the advertisements of statutory Boards, Corporations and Undertakings to "Gujarat Samachar". The respondent No.2, as per the petitioners' case, in his press conference at Rajkot on 18-12-1996

admitted that he had given orders to stop release of advertisements to "Gujarat Samachar". The petitioners made reference to an anonymous letter containing the Circular dated 29-11-1996 signed by the respondent No.3 wherein the instructions were given to all Government Departments as well as Statutory Boards, Corporations and Government Undertakings not to release any advertisements to "Gujarat Samachar". This decision (circular) has given rise a cause to the petitioners to file this petition and prayer has also been made for quashing and setting aside of this circular in the petition.

8. The respondent No.2 has filed an affidavit which is there on the record and he has controverted all the allegations made of malafide against him by the petitioners.

9. Along with the affidavit-in-reply dated 11th January, 1997, the State of Gujarat filed a document annexure 'A' for which prayer has been made by the petitioners, as stated earlier, for quashing of the same also.

10. The affidavit-in-reply filed on behalf of the State of Gujarat dated 11-2-1999, copy of which has been given on 5-4-1999, I do not find any rejoinder to the same has been filed by the petitioners. The Additional Chief Secretary, Information and Broadcasting Department, Government of Gujarat, stated on oath in para-3 thereof that Shri Keshubhai Patel, the present Chief Minister of the State was sworn in as the Chief Minister w.e.f. 3-3-198. He stated that discontinuance of the advertisement is a matter of past and this Government holds the view that there should be balance in respect of the freedom of press and its accountability to the Society. The Additional Chief Secretary then states that the State Government does not approve of any discriminatory treatment meted out to the present petitioners in the past. From these statements of Shri P.K. Laheri, Additional Chief Secretary made on oath, it is clear that the Government has accepted as a fact that the petitioners in past were subjected to discriminatory treatment in the matter of getting advertisements from the State Government, Corporations or other Bodies. In para-4 of this affidavit, the Additional Chief Secretary, State of Gujarat has stated that the decision annexure 'A' dated 16th September, 1987 which is challenged by the petitioner in this petition by amendment thereof, is not in consonance with the democratic ideas of freedom of Press and will not be treated as guiding principles. So this grievance of the petitioners, in view of this

statement made by the Additional Chief Secretary to the extent it relates to challenge to the aforesaid policy decision now no more survives.

11. The Additional Chief Secretary then made reference to the proceedings of this court of 31st January, 1997, on which date, the Additional Advocate General of the State on instructions stated that the Government is considering to release the advertisements in favour of the petitioner and this is without prejudice to the rights of both the parties. In para-6, the Additional Chief Secretary of the State submitted that gradually the State Government released the advertisements in favour of the petitioner w.e.f 15-2-1997. It is further stated that the advertisements which were not released to the Gujarat Samachar, a publication of the petitioners during the period remain to be adjusted for term and quantum as the petitioner was deprived of the same during the period in which the release of the advertisement to its publication was suspended by the then Government. From this affidavit, it is clear that the Government has admitted the claim of the petitioners of compensation to be awarded and the Government has in substance given out the modality how the petitioner has to be compensated. Challenge to the circular dated 29th November, 1996 made by the petitioners in this petition does not survive in view of this affidavit of the Additional Chief Secretary who in very unequivocal terms stated in para-7 thereof that the aforesaid circular has been withdrawn. The modality in which the petitioner have to be compensated for loss which it suffered has been highlighted and made clear in para-7 of the affidavit by the Addl. Chief Secretary of the State of Gujarat in terms :

"I further submit that the loss suffered by the petitioners as a result of withholding of the advertisements may have to be estimated and such loss can be compensated by releasing further additional advertisements in favour of the petitioner. I submit that the State Government is conscious of this fact. In this case, the petitioner has suffered loss on account of suspension of release of advertisements to its publication by the State Government."

12. The petitioner, as stated earlier, claimed for compensation to be awarded for the loss against all the respondents which includes the respondent No.2 also but in substance it is against the State Government and the State Government has in unequivocal terms accepted that

the discriminatory treatment was meted out to the petitioners and the loss it has suffered and modality has been given out for compensating for this loss. In view of this affidavit of the Addl. Chief Secretary, now in fact, nothing survives in this petition except what the malafide allegations made against the respondent No.2. The State Government has accepted it to be a case where the petitioner has been wrongly deprived of the advertisements without any justification. So far as the action taken by the State Government in past, as a result of which this loss is suffered by the petitioner etc. has been now taken care of by the Government and accordingly it has started to release the advertisements to the petitioner-newspaper and also decided to compensate for the loss suffered.

13. As a result of the aforesaid discussion, and as the State of Gujarat has accepted all the grievances of the petitioners in substance and now nothing survives in this petition and accordingly the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. In the facts of this case, no order as to costs. However, the dismissal of this petition will not come in the way of the petitioners, if they so desire, to file a suit for claiming damages personally from the respondent No.2 for his alleged vindictive, malafide and malicious action but in this petition no such relief can be granted in view of what is stated in this judgment.

zgs/-